1951. **File No.** Public Conveyance II/51 (N)

Legal Department

B

BRANCH

Subject:—

Notifications under the Bombay Public Conveyance Act 1920.

P.7/E

File No. Public Conveyance II/51 (N)

Elm. 191 e.

345-B

It appears that the provisions of the Bombay Public Conveyances Act, 1920 have already been extended to the Ahmedabad City, Ahmedabad suburbs and the Ahmedabad Cantonment by the Commissioner, Northern Division, by his notification No. POL 429A dated the 4th August 1923 and that the District Superintendent of Police, Ahmedabad City, appears to have been appointed as the person to perform the functions assigned by the Act to the Commissioner of Police. Even though section 19 provides for the unconditional power for appointing stands, sub-section (4) of section 36 in specific terms provides that when this Act is extended to any area the power of appointing stands shall be exercised subject to the approval of the State Government (or the Commissioner of the Division as the case may be). There is nothing in this sub-section however to show that any previous publication was contemplated. The District Superintendent of Police, Ahmedabad could have straightaway published the notification finally, after obtaining the approval of the Commissioner, Northern Division. The posts of Commissioners of Divisions having been abolished, the proposed notification may now be issued (without previous publication) after the approval of Government. A requisite draft is sent herewith.

Sd. J.R.Dhurandhar.
24/3

Remembrancer of Legal Affairs.

U.R. to H.D. No. 4766, dated the 26th March 1951.

VBP. 5-7-56.

Before the notification at pages 33-37 is scrutinised, the information on the following points is necessary.

2. The notification at page 25 was issued by the Commissioner N.D. on the 20th May 1950. By this notification it was directed that the provisions of the Bombay Public Conveyances Act, 1920 shall extend to the Baroda City Municipal limits and the area within a radius of one mile therefrom with retrospective effec i.e. from the 1st February 1950. Sub-section (3) of section 36 of the Act sepcifically provides that a notification under this section extending this Act to any area shall be published at least thirty days before the date fixed for its coming into effect. These mandatory provisions not having been complied with (H.D. should, however, verify from the Gazette Notification) by the Commissioner, N.D., the notification is legally ~~by~~ ineffective. In that case, a fresh notification by Government will not be necessary. (Vide the provisions of the Bombay Commissioners (Abolition of Office) Act, 1950, (Bom XXVIII of 1950).

3. Secondly, under L.D.U.R. No. 3265 dated 22nd February 1951 a draft notification under section 36 of the Act extending the provisions of the said Act to the are comprised within the limits of the Baroda Railway Station and the Baroda Railway Yard, was supplied to H.D. That Department should verify (if this notification has been issued) whether this area is different from the railway area included in the Commissioner, N.D.'s notification No. POL 1524 dated 20-5-1950 at page 25 ante in respect of which the Superintendent of Police, B.B. & C.I. Railway is to exercise the functions specified therein.

4. Thirdly, there is nothing in the D.S.O. Baroda Notification at pages 33-38 ante to show that fees fixed and stands appointed thereunder are in respect

respect of the areas within the jurisdiction of the D.S.P. Baroda, as specified in the Commissioner N.D.'s notification. In fact a stand near Dabhoi Railway Station has been appointed. It should be ascertained whether this stand is outside the railway limits and whether there are any stands which properly should be fixed by the Superintendent of Police B.B. & C.I. Railway as contemplated by the Commissioner N.D'snotification.

Sd. J.R.Dhurandhar.
16/4.

Secretary to Government.

U.R. to H. D. No. 6218, dated the 17th April 1951.

VGP. 5-7-56.

It was pointed out to Government by the Inspector General, Police, that in the notification No. P.O.L.P.C. 12 dated 25th December 1921 and No. P.O.L.P.C. 20 dated 3rd January 1929 issued by the Commissioner, Southern Division, under section 36 of the Bombay Public Conveyances Act, 1920, it was inter alia provided that bullock carts drawn by one or two bullocks plying for hire in the areas specified therein shall be specially exempted from the operation of the said Act. This exemption was given by the Commissioner in virtue of the provisions of clause (c) of sub-section (2) of section 36 of the Act. The Inspector General, Police however, points out that according to G.R.H.D.No.3092/5 dated 9th October 1945 (at page 20 ante) Government desired that no bona fide agriculturist plying his bullock carts on hire should be required to obtain a licence under the Act and that exemption given by the Commissioner, Southern Division, in the aforesaid two notifications goes beyond the orders issued in the said G.R. The Home Department has agreed with the view taken by the I.G.P. and has proposed in its note at page 39 that the said exemption tbbe rescinded. If the proposal of the Home Department is given effect to by amending the Commissioner's S.D.'s notifications by deleting the portion which refers to exemption of bullock ~~carts~~ carts the effect will be that even the bona fide agriculturists plying their bullock carts on hire would be required to take out licences under sections 3 and 7 of the Act as they will be governed by all the provisions of the Act in the area to which the Act is extended under section 36(1) of the Act. Unless the orders in G.R.H.D. No. 3092/5 dated 9th October 1947 are embodied in a

in a notification under clause (c) of sub-section (2) of section 36, the bona fide agriculturists will not get the benefit which it is intended should be extended to them. The object can be achieved by amending the notification in the manner shown in the revised drafts sent herewith.

Sd. J.R.Dhurandhar,
15/5

Remembrancer of Legal Affairs,

U.R. to H.D. No. 7777 dated the 17th May 1951.

VGP. 5-7-56.

Para 3 of the H.D.'s note at p. 49.- The Commissioner's N.D.'s Notification at p. 25 ante being legally ineffective as pointed out in para 2 of Legal Department opinion at p. 39-40 ante, it is not necessary to supersede it as assumed by the Home Department. A requisite draft notification is sent herewith. To remove doubt the Commissioner N.D.'s notification may be formally cancelled by a separate notification.

2. D.S.P. Baroda's draft notification: In place of District Superintendent of Police, Barbda's draft notification at pp. 7 to 18 ante three revised draft notifications are sent herewith. The District Superintendent of Police, Baroda's draft notification consists of the following parts -

(1) fixing of fees for the matters specified in sections 7(1) and 14(1);

(2) fixing the legal rates of fares under section 18;

(3) fixing of stands under section 19;

(4) framing rules under section 35;

while under section 36(4) of the Act the powers of fixing fees and of appointing stands has to be exercised subject to the previous approval of the State Government, the power of fixing the legal rates of fares under section 18 has to be exercised subject to the condition of previous publication and previous sanction of the State Government and the power of framing rules under section 35 has to be exercised subject to the approval of the State Government and to the condition of previous publication (see section 36(4) and 35(1)).

The said draft notification has, therefore, been split up into three draft notifications, namely :-

The first under sections 7(1) 14(1) and 19; the second under section 18; and the third under section

2(c), 6(2) and 35.

3. The reference to the stand near Dabhoi Railway Station has been deleted in view of the information now supplied by the District Magistrate at 'A' on page 47 ante.

4- Rule 4 of the proposed subsidiary rules under section 35(1) provides that no pony shall be used for driving a licensed conveyance which is below 12-2 hands in height. The measure of 'hands' is not susceptible of definition. The Height in feet may be substituted for the said measure.

5. In the District Superintendent of Police, Baroda's draft the term "day" has been defined in the subsidiary rule (p.12 ante) It, however, appears that in item (5) of the list of fares in respect of Baroda City, a rate of fares has been fixed with reference to a day. It will be more appropriate to transpose the definition of "day" given in the subsidiary rules to the notification fixing the ~~face~~ fares by day.

Sd.

Deputy Secretary to Government.

U.R. to H? D. No. 16920, dated the 24th October 1951.

VGP. 5-7-56.

Office of the R.L.A.

A revised draftnotification is sent herewith.

The Superintendent of Police, Railways, Saurashtra will have to obtain the approval of the Bombay Governme under sub-section (4) of section 36 of the Act before fixing fees and appointing stands and making rules in respect of the area within thx his jurisdiction.

Sd. J.R. Dhurandhar.
13/12.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 1994 dated the 13th December 1951.

VGP, 6-7-56.